

**ARKANSAS SENATE**  
85th General Assembly - Regular Session, 2005  
**Amendment Form**

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**Subtitle of Senate Bill No. 1071**

"TO MODIFY THE EFFECTIVE DATE OF ACT 1273 OF 2003 AS IT APPLIES TO THE  
SOURCING OF SALES FOR SALES AND USE TAX PURPOSES AND TO PROTECT  
MUNICIPAL SALES AND USE TAX REVENUES."

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**Amendment No. 1 to Senate Bill No. 1071.**

Amend Senate Bill No. 1071 as originally introduced:

Delete SECTION 1 in its entirety and substitute the following:

"26-52-521. Sourcing of sales. ~~{Effective when contingency in Acts 2003, No. 1273, § 88 is met.}~~

(a)(1) This section applies for purposes of determining a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product or service.

(2) This section does not affect the obligation of a purchaser or lessee to remit tax on the use of the product or service to the taxing jurisdictions of that use and does not apply to the sales or use taxes levied on the retail sale excluding lease or rental, of motor vehicles, trailers, or semitrailers that require licensing.

(b) Excluding lease or rental, the retail sale of a product or service shall be sourced as follows:

(1) If the product or service is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(2) If the product or service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's designated donee occurs, including the location indicated by instructions for delivery to the purchaser or donee known to the seller;

(3) If subdivisions (b)(1) and (2) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(4) If subdivisions (b)(1)-(3) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available if the use of this address does not constitute bad faith; or



(5) If none of the previous rules of subdivisions (b)(1)-(4) of this section apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, the location will be determined by the address from which tangible personal property was shipped or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(c) The lease or rental of tangible personal property other than property identified in subsection (d) or (e) of this section shall be sourced as follows:

(1)(A) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section.

(B) Periodic payments made after the first payment are sourced to the primary property location for each period covered by the payment.

(C) The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business if use of this address does not constitute bad faith.

(D) The property location shall not be altered by intermittent use at different locations such as use of business property that accompanies employees on business trips and service calls;

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section; and

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for lease.

(d) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment as defined in subsection (e) of this section shall be sourced as follows:

(1)(A) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location.

(B) The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business if use of this address does not constitute bad faith.

(C) This location shall not be altered by intermittent use at different locations;

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section; and

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for lease.

(e)(1) Including lease or rental, the retail sale of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section, notwithstanding the exclusion of lease or rental in subsection (b) of this section.

(2) "Transportation equipment" means any of the following:

(A) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(B) Trucks and truck tractors with a Gross Vehicle Weight Rating of ten thousand one pounds (10,001 lbs.) or greater, trailers, semitrailers, or passenger buses that are:

(i) Registered through the International Registration Plan; and

(ii) Operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(C) Aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; or

(D) Containers designed for use on and component parts attached or secured on the items under subdivisions (e)(1)-(3) of this section.

(f) For the purpose of subsection (b) of this section:

(1) "Receive" and "receipt" mean:

(A) Taking possession of tangible personal property; or

(B) Making first use of services; and

(2) "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(g) When a motor vehicle, trailer, or semitrailer that requires licensing is sold to a person who resides in Arkansas, the sale is sourced to the residence of the purchaser.

(h) This section shall apply to all state and local taxes administered by the Department of Finance and Administration.

(i)(1) The provisions of this section shall become effective on the first day of the second calendar month following a determination by the Director of the Department of Finance and Administration that federal law authorizes the state to collect sales and use tax from some or all of the sellers that have no physical presence in the State of Arkansas and that make sales of taxable goods and services to Arkansas purchasers.

(2) Subdivision (i)(1) of this section shall supersede all previous dates or conditions upon which this section previously became effective."

The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_

By: Senator Glover

MMC/KSW - 03-09-2005 16:16

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Secretary